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PART I

Punjab Government Notifications and Orders

STATE ELECTION COMMISSION, PUNJAB

S.C.O. No. 49, Sector-17E, Chandigarh.

NOTIFICATION

The 20th May, 2020

No. SEC-SA-ET-2020/1172.—In pursuance of the provisions of Sector 93 of the Punjab State Election Commission Act, 1994 (Punjab Act No. 19 of 1994), the Election Commission hereby notifies the order of the Punjab & Haryana High Court for general information.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP-208-2019

Date of decision : 18.03.2020

Raghbinder Singh

....Petitioner

V/s

State of Punjab & ors.

....Respondents

CORAM:HON'BLE MR. JUSTICE RAJAN GUPTA

HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. G.S. Punia, Sr. Advocate with

Mr. P.S. Punia, Advocate for the petitioner.

Mr. IPS Doabia, Addl. A.G. Punjab.

Mr. S.D. Sharma, Sr. Advocate with

Mr. Ved Priya Malik, Advocate for respondent no. 7.

RAJAN GUPTA J.

Whether the Returning Officer appointed for the election of Sarpanch of village Salani, Tehsil Amloh,

District Fatehgarh Sahib, Punjab could change the entries record in Form IX (Annexure P-2) showing the petitioner to have secured the higher valid votes and declare respondent no. 7 elected as Sarpanch of the Gram Panchayat, is the question which has arisen for determination in this petition. The version of petition is that State of Punjab issued notification for conducting election of the Sarpanch and the Panches of villages in Punjab and accordingly, petitioner and one Inderjit Singh (respondent no. 7) filed their nominations for the post of Sarpanch. The said election was held on 30.12.2018 and respondent no.5 Rajiv Garg was deputed as Presiding and Returning Officer. After casting of votes and their counting, petitioner was declared elected as Sarpanch with 873 votes as compared to respondent no.7 who secured 620 votes. Both petitioner and respondent no.7 signed Form IX, which was thereafter given to petitioner duly signed by Presiding Officer Sh. Rajiv Garg but to utter surprise of the petitioner, respondent no. 7 in connivance with respondent no. 5 changed the result and they made cutting on Form IX.

Learned counsel for the petitioner has argued that the said Form IX was signed by both the candidates after acceptance of the count of votes and at that time respondent no. 7 did not raise any objection and when petitioner went to his house to celebrate his election, he came to know about the fraud committed by respondent no. 7 in connivance with respondent no. 5. He has further argued that even the cutting which has been made in Form no. 9 has not been signed by any of the candidates and it has been done by the Presiding Officer himself. In response to the pleaded facts of petitioner, respondent no. 7 Inderjit Singh has submitted by way of his reply that the Officer who committed mistake while filing Form IX has himself rectified the error committed by him and therefore, nothing is wrong in it. Respondent no. 5 Rajiv Garg has also filed his separate reply vide which he has submitted that the present petition is not maintainable because the petitioner has not exhausted the alternate statutory remedy of filing of election petition under section 74 of the Punjab State Election Act, 1994. On facts, he has submitted that he committed an inadvertent mistake while making entries in Form IX, which was accordingly rectified by him. He has further submitted that his bona fide is apparent from the fact that when he came to know about the mistake committed by him, he immediately called the petitioner on his mobile number but after even trying for five times, petitioner intentionally did not take his call. Moreover, petitioner was never declared as elected.

Both the parties have been heard at length and this court has considered the arguments advanced by counsel for the parties on law points as well.

The question which is to be answered in this writ petition has already been considered by Hon'ble Supreme court of India in Civil Appeal No. 4926 of 2000 titled as Malkit Kaur vs. Jatinder Kaur & others, decided on 20.11.2001 and has further been followed by Division Bench of this court in Kashmir Kaur vs. State of Punjab, 2004(1) RCR (Civil) 580 and the notion so far is negative. Not only the precedent but infact, mere perusal of bare provisions makes it apparent that once a candidate is declared elected in Form IX, the Returning Officer ceases to have any power to alter the said declaration subsequently and the only alternative available to aggrieved person is to file an election petition. Rule 33 of Punjab Panchayat Elections Rules, 1994 is very clear in this regard. Coming to facts of the case, it is an admitted position that respondent no. 5 made alteration in Form IX, after getting it signed from both the candidates and in absence of petitioner. In fact, documents Annexures P-1 & P-2 i.e. copies of Form IX have been placed on record by the petitioner, in order to show that votes count was changed by Returning Officer after getting the Form IX signed from both the candidates and also after affixing his own signatures on the bottom right corner of the said form. Not only this, rather the copy of Form IX, Annexure P-2 was handed over to petitioner by respondent no. 5 at the spot, after which petitioner left the spot. Thereafter, correction in Form IX and declaration of election of respondent no. 7 as Sarpanch, happened in absence of petitioner. Although, respondent no. 5 has pleaded that he called petitioner at his phone

to convey about the mistake committed by him but then except oral submission he has not placed on record any material to reflect his intent. In considered opinion of this court, once the Returning Officer appended his signatures on Form IX for the first time, in the presence of both the candidates, the results had become final and thereafter, if any infirmity or error was detected, only recourse left to other party was to file an election petition. This court, in this sense, does not find any merit in the arguments advanced by learned counsel for respondent no. 7 regarding maintainability of instant writ petition.

In view of above, present petition is allowed. It is held that the petitioner was duly declared as elected Sarpanch of village Salani, Tehsil Amloh, District Fatehgarh Sahib, Punjab and respondent no. 5 did not have the authority to make any alteration/correction in Form IX. Accordingly, the action of concerned authority to administer oath to respondent no. 7 is hereby declared as illegal. Respondent no. 2 is directed to ensure that the petitioner be administer oath of office of Sarpanch within a period of 15 days from the date of presentation of copy of this order.

Before parting with this judgment, we deem it appropriate to issue directions to State authorities to fix responsibility of such negligent officials, who commit blunders while discharging public functions of great responsibility. It is the main task of Presenting/Returning Officer to reflect the results of elections with utmost sincerity and honesty and if they cannot do so, they deserve no leniency. If some Rules have been framed for a particular purpose then those are to be followed, under any circumstances. If it was mentioned under Rules that after counting of votes, Presiding/Returning Officer shall fill Form IX, then the concerned official had a statutory obligation to fill up said form correctly with due diligence. Ordered accordingly.

(RAJAN GUPTA)

JUDGE

Sd/-

March 18, 2020

Ajay

JAGPAL SINGH SANGHU

State Election Commissioner

Punjab.

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned:

Yes/No